

Before the
Federal Communications Commission
Washington, D.C. 20554

ORIGINAL

In the Matter of)
)
Reexamination of Roaming Obligations of) WT Docket No. 05-265
Commercial Mobile Radio Service Providers)
and Other Providers of Mobile Data Services)

To: The Commission

FILED/ACCEPTED

JUN - 6 2011

Federal Communications Commission
Office of the Secretary

PETITION FOR RECONSIDERATION

Blanca Telephone Company ("BTC"), by its attorneys, and pursuant to Section 405 of the Communications Act of 1934 ("Act")¹ and Section 1.429(a) of the Commission's Rules ("Rules"),² hereby petitions the Commission to reconsider its *Second Report and Order* in the above captioned proceeding.³

BTC, which has been locally owned and operated since 1926, began its operations as an independent wireline telephone company serving Blanca and Fort Garland, Colorado. BTC since has expanded its operations to provide mobile wireless and Internet services to customers in various rural communities and surrounding areas in Colorado. In an effort to provide seamless coverage for its customers who travel outside BTC's service areas, BTC has sought to obtain roaming agreements, for both voice and data services, from national wireless carriers, and has fre-

¹ 47 U.S.C. § 405.

² 47 C.F.R. § 1.429(a). Section 1.429 of the Rules was recently amended by the Commission, with the amendments taking effect on June 1, 2011. See 76 Fed. Reg. 24392 (May 2, 2011).

³ *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Second Report and Order, FCC 11-52 (rel. Apr. 7, 2011), 76 Fed. Reg. 26199 (May 6, 2011) ("*Second Report and Order*" or "*Order*"), *appeal docketed, Cellco Partnership v. FCC*, Case No. 11-1135 (D.C. Cir. May 13, 2011).

quently encountered difficulties stemming from some of these carriers' lack of cooperation in negotiating roaming agreements with reasonable terms, conditions, and rates.

BTC's interests are adversely affected by the *Second Report and Order* because, if the reconsideration and action sought by BTC in this Petition are not undertaken by the Commission, then BTC's opportunity to negotiate data roaming agreements in a timely manner with national mobile wireless data service providers, on reasonable terms and conditions, and with reasonable rates, will be unduly constrained.

I. INTRODUCTION

As the Commission has emphasized in the *Second Report and Order*, the deployment of mobile data networks is an important national priority.⁴ In fact, President Obama has underscored that “[f]or our families and our businesses, high-speed wireless service [is] how we’ll spark new innovation, new investment, new jobs.”⁵ The availability of data roaming is a critical

⁴ *Second Report and Order* at para. 1 (finding that “[t]he deployment of mobile data networks is essential to achieve the goal of making broadband connectivity available everywhere in the United States”); *id.* at para. 14 (footnote omitted) (noting that “[m]obile data services increasingly are used for a variety of both personal and business purposes, including back-up communications during emergencies and for accessibility”). See *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13, 2011 WL 466775 (rel. Feb. 9, 2011), at para. 241 (emphasis added) (stating that “[m]obile voice and mobile broadband services are playing an increasingly prominent role in modern telecommunications. Given the important benefits of and the strong consumer demand for mobile services, ubiquitous mobile coverage must be a national priority.”).

⁵ President Barack Obama, Remarks by the President on the National Wireless Initiative in Marquette, Michigan (Feb. 10, 2011), at 6 (unpaginated transcript).

component in ensuring that new mobile data networks are deployed,⁶ especially by smaller rural and regional carriers serving rural communities and remote areas across the Nation.⁷

BTC applauds the Commission for establishing data roaming requirements and obligations in the *Second Report and Order* that will contribute significantly to the Commission's goals regarding the deployment of mobile data networks, and regarding the "development of competitive facilities-based service offerings for the benefit of consumers."⁸ As the demand for mobile broadband services continues to grow, it is essential that consumers have access to seamless nationwide coverage. The *Order* is a significant step towards achieving the Commission's stated goals.

BTC agrees with the Commission that it has ample authority under the Act to adopt the roaming requirements and obligations reflected in the *Second Report and Order*,⁹ and endorses the Commission's conclusion that its imposition of a requirement that commercial mobile data service providers must offer data roaming arrangements on commercially reasonable terms and conditions, "will best promote consumer access to seamless mobile data coverage nationwide, appropriately balance the incentives for new entrants and incumbent providers to invest in and deploy advanced networks across the country, and foster competition among multiple providers in the industry, consistent with the National Broadband Plan."¹⁰

⁶ See *Second Report and Order* at para. 1 (stating that "the availability of data roaming will help ensure the viability of new wireless data network deployments and thus promote the development of competitive facilities-based service offerings for the benefit of consumers").

⁷ See *id.* at para. 15 (footnote omitted) (indicating that "[a]vailability of . . . roaming arrangements . . . may be particularly important for consumers in rural areas—where mobile data services may be solely available from small rural providers").

⁸ *Id.* at para. 1.

⁹ See *id.* at paras. 2, 57-70.

¹⁰ *Id.* at para. 13. See Omnibus Broadband Initiative, FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (Mar. 16, 2010).

For the reasons discussed in the following section, however, BTC believes that, in certain respects, the Commission should reconsider its actions in the *Second Report and Order* for the purpose of increasing the likelihood that its data roaming requirements, and the procedures for enforcing these requirements, will be effective in ensuring that consumers in rural America have access to mobile data services on a seamless nationwide basis.

II. DISCUSSION

One of the principal objectives the Commission highlights in the *Second Report and Order* is the need to ensure that commercial mobile data service providers will not “unduly delay or stonewall the course of negotiations regarding . . . request[s]” for data roaming agreements.¹¹ As a general matter, the Commission concludes that it is likely AT&T and Verizon Wireless “will not be willing to offer roaming arrangements that cover [Long Term Evolution] networks any time in the near future, except in very limited circumstances[.]”¹² and the Commission cautions that “given the coverage of these nationwide providers, there is a serious risk they might halt the negotiations of roaming on their advanced mobile data networks altogether in the future in the absence of Commission oversight, harming competition and consumers.”¹³

While the Commission is willing to adopt a rule that “allows host providers to control the terms and conditions of proffered data roaming arrangements, within a general requirement of commercial reasonableness[.]”¹⁴ the Commission also makes clear its intention to take into account “whether the host provider has responded to the request for negotiation, whether it has en-

¹¹ *Second Report and Order* at para. 42; see, e.g., *id.* at para. 52.

¹² *Id.* at para. 27 (footnote omitted).

¹³ *Id.* (footnote omitted).

¹⁴ *Id.* at para. 33.

gaged in a persistent pattern of stonewalling behavior, and the length of time since the initial request”¹⁵ in resolving roaming disputes.

BTC is concerned that efforts by national carriers to delay or stonewall negotiations could significantly undercut the Commission’s objectives in adopting the *Second Report and Order*. In addition, in light of the Commission’s own admonition regarding the serious risk that AT&T and Verizon will attempt to stymie data roaming arrangements, the mechanisms the Commission establishes in the *Order* could prove to be insufficient to curb AT&T’s and Verizon’s incentives and avoid the risk that smaller rural and regional carriers will be unsuccessful in negotiating data roaming agreements on reasonable terms with national carriers. BTC therefore urges the Commission to reconsider certain aspects of the *Order* to reduce these risks.

Specifically, the Commission should reconsider and reverse its decision declining to “adopt a time limit for roaming negotiations to limit the opportunity for host carriers to delay in negotiating roaming agreements.”¹⁶ Four parties participating in the rulemaking proceeding had suggested that such a time limit be imposed,¹⁷ but the Commission has refused to do so. The Commission reasons that an across-the-board negotiation deadline requirement would not be workable because some negotiations would likely require more time, and because allegations of undue delay could be addressed on a case-by-case basis.¹⁸

Adopting a time limit for data roaming negotiations would be advantageous, and would further the Commission’s public interest goals, because it would provide a practical means of

¹⁵ *Id.* at para. 86.

¹⁶ *Id.* at para. 84 (footnote omitted).

¹⁷ *See id.* at para. 84, n.240 (citing comments or replies filed by Cox Communications, Rural Cellular Association, Southern Communications Services, Inc. d/b/a SouthernLINC Wireless, and United States Cellular Corporation).

¹⁸ *Id.* at para. 84.

addressing a central reality of the mobile wireless marketplace, namely, that carriers negotiating for data roaming agreements in most cases would come to the table with dramatically disproportionate levels of bargaining power. BTC welcomes the roaming requirements established in the *Second Report and Order* as a step in the direction of correcting this bargaining imbalance, but BTC also believes that these requirements should be strengthened.

Although the Commission, for the most part, does not focus directly in the *Second Report and Order* on the market power of national carriers,¹⁹ Commissioner Clyburn has cogently emphasized the problem:

Some of the opponents to this Order are companies, who over the past few years, have merged with several of their roaming partners. Those mergers mean the number of potential roaming partners for their competitors has dropped. The fact that these merged companies oppose a mobile broadband service roaming rule suggests to me that they might use their increased market power to unreasonably restrict consumer access to competitive alternatives.²⁰

The concerns expressed by Commissioner Clyburn would likely become even more pronounced if, for example, the proposed takeover of T-Mobile USA, Inc. (“T-Mobile”) by AT&T²¹ is approved by the Commission.²² BTC agrees with the Commission’s conclusion that AT&T and Ve-

¹⁹ The Commission does note, however, that:

Consolidation in the mobile wireless industry has reduced the number of potential roaming partners for some of the smaller, regional and rural providers. In addition, this consolidation may have simultaneously reduced the incentives of the largest two providers to enter into such arrangements by reducing their need for reciprocal roaming.

Id. at para. 27 (footnotes omitted).

²⁰ *Id.*, Statement of Commissioner Mignon L. Clyburn.

²¹ See FCC, *Commission Opens Docket for Proposed Transfer of Control of T-Mobile USA, Inc. and Its Subsidiaries from Deutsche Telekom AG to AT&T Inc.*, WT Docket No. 11-65, Public Notice, DA 11-673 (rel. Apr. 14, 2011). T-Mobile favors the imposition of data roaming requirements, while AT&T opposes such requirements. See *Second Report and Order* at para. 11 & n.26, para. 12 & n.39.

²² See, e.g., Sprint Nextel Corporation, WT Docket No. 11-65, Petition To Deny (filed May 31, 2011) at 8 (footnote omitted):

AT&T’s proposed takeover of T-Mobile would result in a very highly concentrated wireless market and lead to serious anti-competitive harms in multiple separate product mar-

rizon have incentives to obstruct data roaming negotiations initiated by small rural and regional carriers. Given these incentives, and given the fact that AT&T and Verizon have more than sufficient market power to act on these incentives, the absence of a “shot clock” for data roaming negotiations could lead to consumer and competitive harms that the Commission is seeking in the *Order* to minimize or avoid.

BTC also respectfully points out that the reasons the Commission cites in the *Second Report and Order* in support of its refusal to establish a negotiation deadline are not persuasive. The Commission is concerned that “some” negotiations may be so complex or fact-intensive that a negotiation deadline would be inappropriate.²³ Because of the possible presence of these complexities, the Commission concludes that, instead of establishing negotiation deadlines, it would be advisable to impose time limits in particular negotiations if a carrier is able to demonstrate to the Commission that the other carrier involved in the negotiations is engaging in undue delay.²⁴

There are two problems with the Commission’s approach. First, while the Commission’s decision is motivated by its assumption that “some” negotiations could be complex and fact-intensive, the Commission does not attempt to quantify this assumption. If it turns out to be the case that relatively few negotiations fall into the “complex” category, then the Commission’s decision to avoid a time limit requirement will have imposed an unwarranted disadvantage on smaller rural and regional carriers seeking data roaming agreements from national carriers. Moreover, if a national carrier considers a particular negotiation to be too complex or fact-

kets For example, even in a broad product market that includes all retail wireless services, at a national level, the transaction would give AT&T and Verizon 76 percent of wireless subscribers and increase HHI [the Herfindahl-Hirschman Index] levels by 696 to a post-merger HHI of 3,198. These measures far exceed the Commission’s HHI screen and provide strong evidence that the takeover would enhance AT&T’s market power and reduce competition.

²³ *Second Report and Order* at para. 84.

²⁴ *Id.*

intensive to fit within the time limit prescribed by the Commission, then it could request an extension from the Commission, based on a sufficient showing.

Second, the Commission's refusal to establish a time limit that would apply in all cases would in most cases impose a requirement on the party—*i.e.*, a smaller rural or regional carrier—that already is in a weak bargaining position in its negotiations with a national carrier. Requiring these smaller carriers—as the *Second Report and Order* does—to demonstrate the need for a time limit in a particular negotiation places the burden on the wrong party. In BTC's view, it would make more sense, and would better serve the Commission's goals and objectives, to have the "default" rule be that *every* data roaming negotiation is subject to a time limit, with the burden being placed on the party desiring to extend the time limit in a particular case.

A shot clock for data roaming negotiations would be extremely effective in limiting the opportunity for national carriers to stonewall or delay negotiations, which is an important Commission objective in establishing data roaming requirements. A shot clock requirement would enable either party to a negotiation, after a reasonable period such as 60 days, to invoke Commission dispute resolution.²⁵ The Commission could then resolve any issues upon which the parties have not agreed by the end of the negotiation period. This approach would transform the incentive to delay and stonewall into an incentive to negotiate and reach agreement (rather than risk an adverse Commission decision).

²⁵ See *id.* at paras. 74-75, 77, 79-80.

III. CONCLUSION

Blanca Telephone Company respectfully urges the Commission to reconsider its action in the *Second Report and Order* refusing to impose a time limit on data roaming negotiations. As BTC has explained in this Petition, a time limit for negotiations would be effective in preventing stonewalling by national carriers that have incentives to frustrate the efforts of smaller rural and regional carriers to obtain data roaming agreements. Requiring these smaller carriers to seek time limits on a case-by-case basis, which is the approach taken by the Commission in the *Order*, places the burden on the wrong party and would tend to undermine the Commission's goal of eliminating or minimizing unnecessary delays in the data roaming negotiation process.

BTC therefore respectfully requests the Commission to adopt a time limit applicable to all data roaming negotiations that are subject to the provisions of the *Second Report and Order*. Pursuant to the time limit, at the end of a reasonable period for negotiations (*e.g.*, 60 days), either party to the negotiations would have the discretion to refer the matter to the Commission for resolution using the dispute resolution processes established in the *Second Report and Order*.

Respectfully submitted,



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